

Royal Vending Company and Wholesale Delivery Drivers' & Salesmen's Union, Local No. 848, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America. Case 31-CA-11414

April 28, 1982

DECISION AND ORDER

**BY CHAIRMAN VAN DE WATER AND
MEMBERS FANNING AND HUNTER**

Upon a charge filed on August 11, 1981, by Wholesale Delivery Drivers' & Salesmen's Union, Local No. 848, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, herein called the Union, and duly served on Royal Vending Company, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 31, issued a complaint and notice of hearing on September 15, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and the complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding. Respondent failed to file an answer to the complaint.

On February 5, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment, with exhibits attached. Subsequently, on February 10, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent failed to file a response to the Notice To Show Cause and therefore the allegations in the Motion for Summary Judgment stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without

knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on Respondent herein specifically states that, unless an answer to the complaint is filed within 10 days of service thereof, "all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board." Further, according to the uncontroverted allegations of the Motion for Summary Judgment, counsel for the General Counsel advised Respondent, by registered letter dated January 19, 1982, that it had failed to file an answer and that summary judgment would be sought unless an answer to the complaint was filed by January 26, 1982. As noted above, Respondent has failed to file an answer to the complaint and has failed to file a response to the Notice To Show Cause.

Accordingly, under the rule set forth above, no good cause having been shown for failure to file a timely answer, the allegations of the complaint are deemed admitted and are found to be true, and we grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is, and has been at all times material herein, a California corporation with an office and principal place of business located in Los Angeles, California, where it is engaged in supplying and servicing food vending machines. Respondent, in the course and conduct of its business operations, annually derives gross revenues in excess of \$500,000 and annually purchases and receives goods or services valued in excess of \$50,000 from sellers or suppliers located within the State of California which receive such goods in substantially the same form directly from outside the State of California.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and

that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Wholesale Delivery Drivers' & Salesmen's Union, Local No. 848, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

Included: All truck drivers, technicians and salesmen.

Excluded: All office clerical employees, guards and supervisors as defined in the Act.

Since at least 1976, and at all times material herein, the Union has been and is now the designated exclusive collective-bargaining representative of Respondent's employees in the unit described above within the meaning of Section 9(a) of the Act. Respondent and the Union have been parties to successive collective-bargaining agreements, the most recent of which was effective for the period July 1, 1980, to June 30, 1981. Commencing on or about April 3, 1981, and at all times thereafter, and more particularly on April 29, May 4, 12, 19, and 26, June 15, 23, and 30, July 6, and September 1, 1981, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about April 3, 1981, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to bargain collectively with the Union as the exclusive collective-bargaining representative of all the employees in the above-described unit in that, since on or about April 3, 1981, Respondent has refused to recognize or to meet with the Union for the purpose of negotiating or discussing the terms of a collective-bargaining agreement.

Accordingly, we find that Respondent has, since on or about April 3, 1981, and at all times thereafter, refused to bargain collectively with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit, and that, by such conduct, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom. We shall also order that Respondent, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Royal Vending Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Wholesale Delivery Drivers' & Salesmen's Union, Local No. 848, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. The following described employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All truck drivers, technicians and salesmen.

Excluded: All office clerical employees, guards and supervisors as defined in the Act.

4. Since at least 1976, and at all times material herein, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about April 3, 1981, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor prac-

tices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Royal Vending Company, Los Angeles, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Wholesale Delivery Drivers' & Salesmen's Union, Local No. 848, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, as the exclusive bargaining representative of its employees in the following appropriate unit:

Included: All truck drivers, technicians and salesmen.

Excluded: All office clerical employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Los Angeles, California, facility copies of the attached notice marked "Appendix."¹

¹ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursu-

Copies of said notice, on forms provided by the Regional Director for Region 31, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 31, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

ant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Wholesale Delivery Drivers' & Salesmen's Union, Local No. 848, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

Included: All truck drivers, technicians and salesmen.

Excluded: All office clerical employees, guards and supervisors as defined in the Act.

ROYAL VENDING COMPANY